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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR-08-00901 SBA
)	
Plaintiff,)	APPLICATION, DECLARATION AND
)	ORDER FOR LEAVE TO FILE
v.)	DEFENDANT'S MOTION IN LIMINE TO
)	EXCLUDE EVIDENCE OF CERTIFICATE
FERNANDO GONZALEZ-VERGARA,)	OF NONEXISTENCE OF RECORD
)	
Defendant.)	
)	
)	Pretrial Conference: July 6, 2009

Fernando Gonzalez-Vergara, by and through his counsel, Assistant Federal Public Defender Angela M. Hansen, respectfully requests that the Court grant him leave to file the attached motion *in limine* to exclude evidence of the nonexistence of records outside of the briefing schedule previously set, based on the U.S. Supreme Court's recently announced decision of *Melendez-Diaz v. Massachusetts*, – S. Ct. –, 2009 WL 1789468 (June 25, 2009).

In support of this application, I, Angela M. Hansen, hereby declare:

1. I am an Assistant Federal Public Defender for the Northern District of California, Oakland Division. My office has been appointed to represent Mr. Gonzalez in this case.
2. On March 17, 2009, the parties set this case for trial, at which time the Court ordered

1 pre-trial motions due on June 9, 2009, and responses due a week later, on June 16, 2009. On June
2 17, 2009, the Court continued the trial date by one week, but the briefing schedule on motions
3 remained unchanged.

4 3. Four days ago – on June 25, 2009 – the United States Supreme Court issued its
5 decision in *Melendez-Diaz*, a case which changes the rule the Court should apply in determining the
6 admissibility of government’s proposed Exhibit 300, a Certificate of Nonexistence of Record
7 (“CNR”).

8 4. It is my opinion that *Melendez-Diaz* is relevant to the admissibility of this exhibit at
9 trial.

10 5. I first became aware of this case and its impact on the CNR at issue in this case on
11 Friday, June 26, 2009, having previously believed that under the established law of this Circuit that a
12 CNR like the one at issue in this case was admissible at trial.

13 6. Because I believe that, due to *Melendez-Diaz*, the state of law has changed since the
14 Court’s deadline for filing motions *in limine* passed, I respectfully request leave of Court to file this
15 additional motion.

16 I declare under penalty of perjury that the foregoing is true and correct, except for those
17 matters stated on information and belief, and as to those matters, I am informed and believe them to
18 be true.

19 Executed this 29th day of June, 2009, in the Northern District of California.

20
21 _____/S/_____
22 ANGELA M. HANSEN
23 Assistant Federal Public Defender
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25
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ORDER

Based on the declaration of counsel in the application above, the Court hereby FINDS:


1. Given the U.S. Supreme Court's recently announced decision of *Melendez-Diaz v. Massachusetts*, – S. Ct. –, 2009 WL 1789468 (June 25, 2009);

2. Given that this case was not decided at the time that briefing on motions *in limine* were due; and

3. Given that defense counsel has attested that this new case is relevant to defendant's proposed motion *in limine*;

For good cause, IT IS HEREBY ORDERED that Mr. Gonzalez is permitted to file the attached MOTION IN LIMINE TO EXCLUDE EVIDENCE OF CERTIFICATE OF NONEXISTENCE OF RECORD

DATED:6/30/09


HON. SAUNDRA BROWN ARMSTRONG
United States District Judge